

Application No.: 10/726997

Case No.: 58389US004

REMARKS

Claims 1 to 14 remain pending. No amendments to the claims are being made, because they are believed to be patentable for the reasons given below. Reconsideration and continued prosecution of this application is respectfully requested.

A paragraph on page 12 of the specification is being amended to include an inadvertently omitted reference to numeral 84, which was included in the drawings as filed (see FIG. 9). The amendment is supported by the drawings, and no new matter has been added.

Provisional Obviousness-Type Double Patenting Rejections

Various claims of the present application were provisionally rejected over various claims of the following copending and commonly assigned applications, under the judicially-created doctrine of obviousness-type double patenting ("ODP"):

U.S. Application 10/726,995 (Attorney Docket No. 59415US002);

U.S. Application 10/727,026 (Attorney Docket No. 59417US002); and

U.S. Application 10/727,072 (Attorney Docket No. 59416US002).

In response thereto, Applicants note that after consideration of the arguments that follow, even if these provisional ODP rejections are maintained they will be the only rejections remaining in this application. As such, they should be withdrawn in view of the practice outlined in MPEP § 804 (I)(B). The applications listed above have not been granted any notice of allowance as of the date of this writing.

Further, Applicants traverse certain allegations made in the Office Action in connection with the ODP rejections. With respect to the '995 application, Applicants disagree with at least the following assertions:

- that it "would have been obvious ... to combine the various features of claims 1, 2 and 12 of '995 to produce the claimed invention of claim 1 of the instant application in order to provide for the greatest patent protection." Applicants challenge the alleged motivation "to provide for the greatest patent protection". Further, combining the features of the cited claims of '995 would not produce the

Application No.: 10/726997

Case No.: 58389US004

invention claimed in present claim 1 at least because the former claims specify a multilayer reflector that "transmits the excitation light", whereas present claim 1 specifies a multilayer reflector that "reflects the excitation light".

- that "[c]aim 2 of the instant invention directly corresponds to claim 5 of '995." As a dependent claim, present claim 2 includes all the limitations of present claim 1, including, for example, a multilayer reflector that "reflects the excitation light". Likewise, claim 5 of the '995 application includes the limitation from claim 1 of '995 of a multilayer reflector that "transmits the excitation light". Thus, present claim 2 does not directly correspond to claim 5 of '995.
- that "[c]aim 3 of the instant application directly corresponds to claim 6 of '995." Again, the Office Action ignores limitations included in these claims through their respectively cited base claims. When due consideration is given to such included limitations, claim 3 of the present application does *not* directly correspond to claim 6 of '995.
- that "[t]he remaining claims directly correspond to each other ..." for the same reasons as given above with respect to claims 2 and 3 of the present application.

With respect to the '026 application, Applicants disagree with at least the following assertions:

- that "the claims of the instant application are broader than the claims of application '026 and therefore are anticipated thereby," and that "[c]aim 1 of the instant application is anticipated by claims 1 and 2 of '026". Although present claim 1 is broader in some respects than both claim 1 and claim 2 of '026, it is also narrower than those claims in other respects. For example, present claim 1 does not require the multilayer reflector to be "nonplanar", as do claims 1 and 2 of '026. On the other hand, present claim 1 does require the layer of phosphor material to be "disposed between" the LED and the multilayer reflector, but claims 1 and 2 of '026 do not. Therefore, the blanket assertion that "the claims of the instant application are broader than the claims of application '026" is

Application No.: 10/726997

Case No.: 58389US004

incomplete and misleading, since the present claims are also narrower than the '026 claims. At best, one can say that the present claims have a different but overlapping scope relative to the '026 claims. This falls far short of one set of claims "anticipating" the other set.

- that "[c]laim 2 of the instant application directly corresponds to claim 4 of '026", for the reasons given above relative to claims 5 and 6 of the '995 application.
- that "[t]he remaining claims directly correspond to each other..." for the same reasons.

With respect to the '072 application, Applicants disagree with at least the following assertions:

- that "the claims of the instant application are broader than the claims of '072 and therefore are anticipated thereby," and that "[c]laim 1 of the instant application is anticipated by claims 1 and 2 of '072". In an analogous manner to the explanation given above, present claim 1 is broader in some respects and narrower in other respects than claims 1 and 2 of '072. Thus, the blanket assertion that "the claims of the instant application are broader than the claims of '072" is incomplete and misleading, since the present claims are also narrower than the '072 claims. At best, one can say that the present claims have a different but overlapping scope relative to the '072 claims, but again, this falls far short of one set of claims "anticipating" the other set.
- that "[c]laim 2 directly corresponds to claim 3 of '072", and that "[c]laim 3 directly corresponds to claim 4 of '072", and that "[t]he remaining claims directly correspond to each other ...", for the same reasons as those given in connection with claims 5 and 6 of the '995 application.

Application No.: 10/726997

Case No.: 58389US004

§ 103 Rejections

Claims 1-4, 6-12, and 14 were rejected under 35 USC § 103(a) as being unpatentable over U.S. Patent 5,813,753 (Vriens et al.) in view of U.S. Patent 6,172,810 (Fleming). Applicants respectfully submit that this rejection cannot be sustained.

It is axiomatic that a *prima facie* case of obviousness requires that the prior art references when combined teach or suggest *all limitations* of the rejected claim. MPEP § 2143. In the present case, the Office Action fails to show where either Vriens or Fleming teach the limitation in pending claim 1 of “a layer of phosphor material *spaced apart from* the LED” (emphasis added). The Office Action mentions only that Vriens discloses “a layer of phosphor material (34; phosphor grains) *adjacent* the multilayer reflector” (emphasis added). We note that Vriens teaches a phosphor in the form of particles either dispersed in a light transmitting material (which surrounds and contacts the LED, as shown in the figures) or adhered to the surface of the LED. See e.g. Vriens at col. 21 lines 33-41; col. 3 lines 31-34 and lines 44-51; col. 5 lines 35-41; col. 6 lines 38-50; and at FIGS. 2-5. No teaching of a phosphor layer “spaced apart from the LED” can be found in Vriens or Fleming. Since the Office Action does not set forth a *prima facie* case of obviousness, the rejection of claim 1 should be withdrawn.

Since dependent claims 2-4, 6-12, and 14 contain all the limitations of claim 1, the rejection of those claims under § 103 should also be withdrawn. Further, with respect to those dependent claims, the Office Action takes positions that Applicants disagree with, including:

- “Re claim 4: Vriens discloses the phosphor material further comprising an adhesive (35).” Although Vriens teaches that transparent material 25 of FIG. 2 is preferably a UV/blue light resistant epoxy such as a cycloaliphatic epoxy (Vriens at col. 3 lines 31-34), the undersigned can find no teaching in Vriens of any adhesive, nor any teaching at all of element 35 shown in Vriens FIG. 3.
- “Re claim 7: Vriens discloses, in figure 3 and throughout the disclosure, the layer of phosphor material (34; phosphor grains) is a discontinuous layer of phosphor material.” In response, Applicants disagree that Vriens teaches any “discontinuous layer of phosphor material”, as that term is used in the present

Application No.: 10/726997

Case No.: 58389US004

claims and specification. The present specification does not teach that a layer becomes discontinuous simply because phosphor particles are dispersed in a binder material. On the contrary, for example, Applicants describe layer 22 of FIG. 2 (composed of one or more phosphor materials mixed with a binder) as a "substantially uniform phosphor layer". See e.g. FIGS. 2-3, and the present specification at page 3 lines 1-23 and page 9 line 14 to page 10 line 3. Compare the discussion of discontinuous phosphor layers on page 19 lines 9-28 of the present specification. Clearly, Vriens does not disclose any discontinuous layer of phosphor material.

- "Re claim 8: Vriens discloses, in figure 3 and throughout the disclosure, the discontinuous layer of phosphor (34; phosphor grains) is a plurality of lines of phosphor material or a pattern of phosphor material." See above. The dispersed phosphor particles of Vriens form no discontinuous phosphor layer and no pattern at all.
- "Re claim 9: Vriens discloses, in figure 3 and throughout the disclosure, the layer of phosphor material is a plurality of dots of phosphor material (34)." See above. The dispersed phosphor particles of Vriens form no discontinuous phosphor layer and no pattern at all.

Fleming does not cure any of the deficiencies mentioned above. The rejection of claims 1-4, 6-12, and 14 should be withdrawn.

Claim 5 was rejected under 35 USC § 103(a) as being unpatentable over U.S. Patent Vriens in view of Fleming, and further in view of U.S. Patent 5,540,978 (Schrenk). Applicants respectfully submit that this rejection cannot be sustained at least because claim 5 includes all the limitations of claim 1, and Schrenk does not, for example, cure the deficiency mentioned above with regard to "a layer of phosphor material *spaced apart from* the LED". The rejection should therefore be withdrawn.

Claim 13 was rejected under 35 USC § 103(a) as being unpatentable over Vriens in view of Fleming, and further in view of Weber et al. ("Giant Birefringent Optics in Multilayer

Application No.: 10/726997

Case No.: 58389US004

Polymer Mirrors"). Again, Applicants respectfully submit that this rejection cannot be sustained at least because claim 13 includes all the limitations of claim 1, and Weber does not, for example, cure the deficiency mentioned above with regard to "a layer of phosphor material *spaced apart from* the LED". The rejection should therefore be withdrawn.

Application No.: 10/726997

Case No.: 58389US004

CONCLUSION

In view of the above, pending claims 1-14 are submitted to be in condition for allowance, the early indication of which is earnestly solicited.

Respectfully submitted,

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Date

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Application No.: 10/726997

Case No.: 58389US004

DUPLICATE**Petition for 2-Month Extension Under Rule 136(a)**

Under the provisions of 37 CFR § 1.136(a), Applicants petition to extend the period for filing a reply in the above-identified application. The requested extension and appropriate fee are as follows (check time period desired):

- ☐ 37 CFR § 1.17(a)(1) - Extension within first month
☒ 37 CFR § 1.17(a)(2) - Extension within second month
☐ 37 CFR § 1.17(a)(3) - Extension within third month
☐ 37 CFR § 1.17(a)(4) - Extension within fourth month.

Please charge the required fee to Deposit Account No. 13-3723. ~~One~~ One copy of this sheet marked duplicate is also enclosed.*

DUPLICATE